

Please cancel Claims 1-47, without prejudice to presentation thereof later in this application, or in a continuing application.

**REMARKS AND REQUEST FOR DECLARATION OF INTERFERENCE**

Applicants have amended the claims herein to present claims directed to the same or substantially similar subject matter as that claimed in U.S. Patent 6,310,090. This patent, which issued October 30, 2001, is directed to pet foods, and methods of using the pet foods, to enhance the immune response in a companion animal (dog or cat) by providing a diet which comprises effective amounts of vitamin E, lutein and  $\beta$ -carotene.

Applicants have substantially copied Claims 3, 7 and 8 of U.S. Patent 6,310,090 (hereinafter “‘090 patent”) in Claims 48, 49 and 50. Claim 5 of the ‘090 patent corresponds to Claim 51.

Claims 1 and 2 of the ‘090 patent correspond substantially to Claims 52 - 54 set forth above. In particular, Applicants note that although the amounts and units recited in the claims newly presented herein are distinct from those of the ‘090 patent claims, there is substantial actual overlap between the claims, and in any event, no patentable distinction there between. As one example, Applicants note that their claims recite an amount of crude protein in the pet food of about 30% where the range recited in Claim 2 of the ‘090 patent is 18-40%.

**Support for the Claims Presented**

Applicants note that this application claims benefit of two priority documents including UK Patent Application 9902051.3, filed January 29, 1999, in advance of the priority date of the ‘090 patent. The claims are clearly supported by the disclosure set forth in the above-captioned application, and the original priority document. Referring to the above-captioned application, with respect to Claims 48 and 49, enhancement of the immune response in a dog or cat is set forth in the original application at page 1, Field of the Invention, line 10. Note that at page 2, line 21, the invention is described as strengthening “the immune response and provides a healthier animal”. On page 3, the Summary of the

Invention, lines 27-29, further describe the invention as “a method of maintaining, optimizing or boosting an immune response to an immunological challenge in an animal by feeding the animal the inventive food stuff.” The application further teaches effective amounts of the combination of vitamin E, lutein and  $\beta$ -carotene. Effective amounts of vitamin E are discussed at page 7, lines 11-24. Effective amounts of  $\beta$ -carotene are set forth at page 11, see in particular, line 11, where effective amounts of lutein are also identified. Both  $\beta$ -carotene and lutein are carotenoids. The specification particularly identifies the value of the combination of vitamin E with carotenoids, see page 10, lines 23-30.

A detailed discussion of the maintenance, improvement and enhancement of the immune system and response begins on page 13 of the above-captioned application, and continues on to page 15, line 15. At page 14, line 18, a discussion of the improvement of response to vaccination is provided (Claim 50). The optimization of immune cells (Claim 49) is discussed beginning at about page 38 continuing on to about page 43.

The specific amounts of the antioxidants recited are set forth, as noted above, where effective amounts are recited (Claims 51 and 52). With respect to diet content of protein, fat and dietary fiber, please see page 6, lines 28–30 as well as the examples beginning page 45 (nutritionally complete diet). Clearly, Claims 48-54 are supported by the original disclosure of the above-captioned patent application.

Applicants further note that they are entitled to benefit of the UK filing of January 29, 1999. Similar disclosure appears therein. With respect to enhancement of the immune system, see page 2, lines 24-26, as well as elsewhere, throughout the specification (see, e.g., page 13, lines 2-3, treatment for compromised immunity) as well as original Claim 15. Identical amounts for vitamin E, lutein and  $\beta$ -carotene appear in the original UK priority application, see page 5, lines 15-26 for vitamin E, page 8, line 25 - page 10, line 2, for the carotenoids, including specifically, lutein and  $\beta$ -carotene, page 9, lines 26-30. Diet contents of crude protein, fat, dietary fiber, etc. are set forth on page 4 of the original priority application, lines 13-30.

Improvement of response to animal vaccinations is disclosed at page 13, lines 1-6 and the treatment of diseases characterized by improvement of immune cells at page 15, lines 1-4.

Accordingly, there is clearly support for the entire scope of the claims presented in the above-captioned pending application, as well as entitlement to benefit of the January 29, 1999 filing date. A request for declaration of interference, 37 C.F.R. §1.607 follows below.



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**REQUEST FOR DECLARATION OF INTERFERENCE**

TECH CENTER 1600/2900

Pursuant to the provisions of 37 C.F.R. §1.607 Applicants comply with the separate provisions of subsection A, below, *seriatim*:

1. Applicants request declaration of an interference between the above-captioned patent application and U.S. Patent 6,310,090.
2. As a proposed count, Applicants identify Claim 1 or 3 of the '090 patent, or Claims 48 or 52 of the above-captioned patent application. The invention is defined by a food stuff, specifically, a pet food. The method claims are directed to effects obtained by feeding the pet the food. Accordingly, these two statutory classes of subject matter constitute a single invention, and a single count is appropriate.
3. Claims 1 and 3 of the '090 patent correspond identically to the proposed Count. Remaining Claims 2 and 4-8 correspond to the proposed Count, as reciting either an effect of administration of the proposed Count, or a specific amount recited to achieve an effective amount of the various components of the proposed Count. These variations do not patentably distinguish over the proposed Count.
4. Claims 48-54 of the above-captioned patent application correspond to the proposed Count, Claims 48 and 52, identically. The remaining claims recite either specific amounts, or results of feeding the pet food to a pet, and do not otherwise patentably distinguish over the proposed Count.
5. The terms of Claims 48-54 are applied to the disclosure of the above-captioned patent application, above, under the section entitled Remarks.
6. Inquiry into the requirements of 35 U.S.C. §135(b) is not required herein, as the claims were first presented within a year of issuance of the '090 patent.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. 09908703 from which the undersigned is authorized to draw.

Based on the foregoing, prompt examination and indication of the allowability of the Claims 48-54, together with declaration of an interference between the above-captioned patent application and U.S. Patent 6,310,090 is respectfully requested. If any questions persist, you are invited to contact the undersigned counsel at (713) 651-5325.

Dated: October 29, 2002

Respectfully submitted,

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